



POLICE DEPARTMENT

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In the Matter of the Disciplinary Proceedings :
- against - : FINAL
Police Officer Sean Ruane : ORDER
Tax Registry No. 952193 : OF
Military & Extended Leave Desk : DISMISSAL
-----X

Police Officer Sean Ruane, Tax Registry No. 952193, Shield No. 7138, Social Security No. ending in [REDACTED] having been served with written notice, has been tried on written Charges and Specifications numbered 2015-13367, as set forth on form P.D. 468-121, dated April 1, 2015, and after a review of the entire record, Respondent having pleaded guilty, is found Guilty.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Sean Ruane from the Police Service of the City of New York.


WILLIAM J. BRATTON
POLICE COMMISSIONER

EFFECTIVE



POLICE DEPARTMENT

May 6, 2016

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In the Matter of the Charges and Specifications : Case No.
- against - : 2015-13367
Police Officer Sean Ruane :
Tax Registry No. 952193 :
Military & Extended Leave Desk :
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At: Police Headquarters
One Police Plaza
New York, New York 10038

Before: Honorable Robert W. Vinal
Assistant Deputy Commissioner Trials

APPEARANCE:

For the Department: Jennifer Kim, Esq.
Department Advocate's Office
One Police Plaza
New York, New York 10038

For the Respondent: Michael Martinez, Esq.
Worth, Longworth & London, LLP
111 John Street-Suite 640
New York, New York 10038

To:

HONORABLE WILLIAM J. BRATTON
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

Charges and Specifications:

1. Said Police Officer Sean Ruane, while assigned to the 61st Precinct, on or about and between August 16, 2014 and March 16, 2015, engaged in conduct prejudicial to the order, efficiency or discipline of the Department in that Police Officer Ruane wrongfully ingested Opiates, to wit; Morphine and Oxycodone without police necessity or authority to do so.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

2. Said Police Officer Sean Ruane, while assigned to the 61st Precinct, on or about and between August 16, 2014 and March 16, 2015, engaged in conduct prejudicial to the order, efficiency or discipline of the Department in that Police Officer Ruane wrongfully possessed Opiates, to wit; Morphine and Oxycodone without police necessity or authority to do so.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on November 30, 2015 and February 25, 2016. Respondent, through his counsel, entered pleas of Guilty to the subject charges and testified in mitigation of his misconduct. The Assistant Department Advocate called Dr. Ryan Paulsen as a rebuttal witness regarding assertions Respondent made during his testimony. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having pleaded guilty, is found Guilty.

FINDINGS AND ANALYSIS

It is not disputed that on March 16, 2015, Respondent reported, as ordered, to the Medical Division's Drug Screening Unit to undergo random drug screening; that on the Drug Screening Questionnaire he completed he wrote "none to report" in response to the question as to whether he had taken any prescription medications during the last three months; that three hair samples were shaved from Respondent's leg; that two of these samples were sent to

Psychemedics Corporation (Psychemedics), a drug testing laboratory, to be analyzed; and that Psychemedics notified the Department that both of these hair samples had tested positive for the presence of Morphine and Oxycodone.

Respondent testified that during the middle of February 2015, he strained his back while shoveling snow and that, as a result, he experienced extreme discomfort especially when bending over and sitting down. He took Ibuprofen and iced his back but this did not lessen his back pain. Since Person A was a nurse, he consulted her. She asked him, "Do you think you need to go to a hospital?" He answered, "No," and told her that although his "discomfort was still pretty severe," because he was still able to get up and to walk, he wanted "to give it a few days to see if it starts to feel a little better on its own." Person A told him that she possessed "pain medication that was...slightly stronger than Ibuprofen" which might help alleviate his pain. Because Person A had received medical treatment for cancer and had also experienced back pain, a physician had given Person A prescriptions for two pain medications. Person A told him that she "had some leftover pills." Respondent testified that she did not tell him what the two pain medications were.

Person A gave him two pills of each medication at a time and he consumed "one of each" pill daily for six or seven days, for a total of about 12 pills, from February 14, 2015 to February 20 or 21, 2015. These pills helped reduce his pain, but when he stopped taking them he began to experience severe headaches, "shaking" and loss of appetite. He then asked Person A what pills she had given him. She told him that she had given him either ten or 20 milligram Oxycodone pills and 90 milligram pills of Avinza which she explained was a brand name for morphine. He then became extremely nervous because he realized that he "had taken something quite a bit stronger than your basic Advil."

On February 22 or 23, 2015, he telephoned the anonymous hotline of the Police Organization Providing Peer Assistance (POPPA) so that he could "talk to somebody and tell them what had happened to see what I should do." Based on "the amount and based on the circumstances" he described to POPPA, he was told to consult a doctor. He told his doctor that he "had taken pain medication in the past at times on a consistent basis" starting when he was "on and off" [REDACTED] for "two to three years" after he suffered a knee injury playing football in college during 2011. His doctor gave him a prescription for [REDACTED] which his doctor told him was a "blocker" medication. His doctor also recommended that he [REDACTED]
[REDACTED]

On March 31, 2015, after he was informed that his hair samples had tested positive, he was interviewed at the Medical Division by Dr. Ciuffo. He told Dr. Ciuffo how the Morphine and Oxycodone "had gotten into my system," and that he had previously taken [REDACTED] for his knee injury and [REDACTED] for a tooth extraction. Later that day, he was interviewed by an investigator from the Internal Affairs Bureau. At the end of this interview, he was told that he was being suspended from duty. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

He was also drug tested weekly and never tested positive.

Respondent acknowledged that regarding the knee injury that he suffered playing football in college during 2011, after his doctor refused to give him a prescription for [REDACTED] he searched the internet and, on January 29, 2014, he obtained a doctor's prescription for [REDACTED] without having an in person consultation with the doctor [Respondent's Exhibit A].

Dr. Ryan Paulsen is employed by Psychemedics as the senior analytical chemist for mass spectrometry. Based on the qualifications cited in his curriculum vitae (DX 2), Paulsen was deemed an expert in the field of forensic toxicology and specifically the laboratory analysis of hair to ascertain the presence of drugs. Dr. Paulsen interpreted the laboratory data package (DX 3) produced by Psychemedics regarding the testing of the two leg hair samples that were collected from Respondent on March 16, 2015, and sent to Psychemedics.

Dr. Paulsen explained that the laboratory data package shows that Respondent's first leg hair sample was tested via LC/MS/MS analysis which detected the presence of Oxycodone in the sample at a concentration of 21.2 nanograms (ng) per 10 milligrams (mg) of hair, and detected the presence of Morphine in the sample at a concentration of 5.9 ng per 10 mg of hair.

Respondent's second hair sample was then also tested via LC/MS/MS analysis which detected the presence of Oxycodone at a concentration of 21.0 ng per 10 mg of hair, and the presence of Morphine at a concentration of 6.3 ng per 10 mg of hair.

Dr. Paulsen testified that a mass spectrometry administrative cutoff level of 5 ng per 10 mg of hair has been established regarding positive results and that Psychemedics will not report a result as being positive if the result is under the cutoff level. Dr. Paulsen further testified that the leg hair samples that were collected from Respondent on March 16, 2015, reflected Morphine and Oxycodone ingestion that took place sometime during a "look back" period of approximately four to five months prior to March 16, 2015.

Dr. Paulsen testified that LC/MS/MS analytical results regarding the testing of Respondent's hair samples are inconsistent with Respondent's claim that he only consumed one Morphine pill and one Oxycodone pill a day for six or seven days. Dr. Paulsen noted that, "Based on the dosages that he says he was talking," that "it would take months, not days, to

achieve” the level of Oxycodone detected by the LC/MS/MS analysis of Respondent’s hair samples. Dr. Paulsen specifically noted that “the Oxycodone result in particular is relatively high” and that this result was consistent with Respondent “taking many multiples of what he is describing of his usage.” In conclusion, Dr. Paulsen opined that the LC/MS/MS analytical results “indicate that he used these drugs on multiple occasions over the course of the look back period” and that “he took many times the amount of Oxycodone, in particular, that he” claimed “that he took over the time period that he said that he took it.”

Dr. Paulsen testified that based on the normal growth rate of leg hair, the leg hair samples that were collected from Respondent on March 16, 2015, had “approximately a four to five month look back period.” Based on this testimony, Respondent’s ingestion of Morphine and Oxycodone took place no earlier than about October 16, 2014, not about August 16, 2014, the date cited in Specification No. 1.

Accordingly, based on Dr. Paulsen’s expert testimony, Respondent is found guilty of having ingested Morphine and Oxycodone on or about and between October 16, 2014 and March 16, 2015 (rather than “on or about and between August 16, 2014 and March 16, 2015” as charged under Specification No. 1).

PENALTY RECOMMENDATION

In order to determine an appropriate penalty, Respondent’s service record was examined. *See Matter of Pell v. Board of Education*, 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on January 9, 2012. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

Respondent has admitted that he wrongfully possessed and ingested Morphine and Oxycodone, which are both controlled substances under New York law,¹ because he injured his back shoveling snow while he was off-duty during mid-February 2015.

Respondent sought to mitigate his misconduct by testifying that he had obtained the Morphine and Oxycodone pills he ingested from Person A, who is a nurse, and by asserting that he was unaware at the time he consumed these pills that they contained Morphine and Oxycodone. However, neither of these factors serves to mitigate his misconduct.

The "Acknowledgement of NYPD Drug Policy Statement" that Respondent signed when he was appointed to the Department (DX 1) put Respondent on notice that it was his personal responsibility to insure that he only possessed and ingested drugs which he had obtained lawfully. Also, although Respondent characterized Person A's action of giving him her own "leftover" Morphine and Oxycodone pills as "dispensing" these pills to him, Person A's action of providing him with Morphine and Oxycodone was illegal and constituted a federal crime since she is not a licensed physician.²

Moreover, although Respondent's attorney argued that Respondent has been honest in that he informed the Department that he had consumed prescription medications Person A gave him, the record establishes that on the day that his hair samples were collected, he was not honest regarding his use of prescription pain killers. Respondent acknowledged that on the Drug Screening Questionnaire that he completed on March 16, 2015, he had answered the question regarding prescription medications he had taken by writing "none to report." During his testimony at this hearing, he acknowledged that this answer was inconsistent with what he told Dr. Ciuffo and IAB on March 31, 2015, after he had been informed that his hair samples had

¹ New York Public Health Law §3306, Schedule II (b)(1)(13) and (14).

² 21 United States Code §207 and §212.

tested positive for Morphine and Oxycodone. His admission during his IAB interview that he had been taking narcotic pain relievers is also inconsistent with what he wrote on the Drug Screening Questionnaire.

Most significantly, I find that the record establishes that Respondent has never honestly admitted the amounts of Morphine and Oxycodone he consumed and/or the length of time that he consumed them. I cannot credit Respondent's unsupported, self-serving testimony that he was not aware that he was ingesting Morphine and Oxycodone because Respondent's claim that he consumed only about 12 pills over no more than a one week period was refuted by Dr. Paulsen's expert opinion testimony that the concentrations of Morphine and Oxycodone detected in Respondent's hair samples are inconsistent with Respondent's claim.

Respondent does not dispute the reliability of Psychomedics' testing results. In explaining these results, Dr. Paulsen testified that, "Based on the dosages that he (Respondent) says he was taking, it would take months, not days, to achieve" the levels of Morphine and Oxycodone that were detected in Respondent's hair samples; that "the Oxycodone result in particular is relatively high;" that these results were "consistent with" Respondent "taking many multiples of what he is describing of his usage;" and that these results "indicate that he used these drugs on multiple occasions over the course of the look back period" and that "he took many times the amount of Oxycodone" that he has consistently claimed he consumed.

Respondent's attorney also argued that the Department's zero tolerance policy regarding illegal drug possession and use should not be applied here because Respondent did not purchase prescription medicine on the street. However, as noted above, Person A's action of providing him with Morphine and Oxycodone was illegal and Respondent knew, or should have known, that using her prescription pain killers was illegal.

The facts here are similar to the facts in *Case No.* [REDACTED] [REDACTED]), where a five-year officer who had no prior disciplinary record was dismissed from the Department after he admitted that he had possessed and ingested the controlled substance Suboxone. At his mitigation hearing, the officer testified that he had become addicted to high doses of pain medication after he suffered a serious line-of-duty injury and that he had acquired Suboxone in an attempt to wean himself off other pain medications. However, he admitted that he acquired Suboxone on his own instead of obtaining this controlled substance lawfully via a prescription issued by a physician.

In that case, as here, the issue was not whether the officer needed a controlled substance to alleviate his pain, the issue presented was how the officer chose to obtain a controlled substance. Also in that case, as here, instead of consulting a physician, the officer opted to acquire a controlled substance in an illegal manner and was ingesting the controlled substance while on full duty status.

Since I credit Dr. Paulsen's expert testimony that the levels of Morphine and Oxycodone discovered in Respondent's hair samples reflect regular use of Morphine and Oxycodone during the period between October 16, 2014 and March 16, 2015, Dr. Paulsen's testimony establishes that Respondent was regularly consuming Morphine and Oxycodone during a period of time when he was performing full duty activities as a police officer. By doing so, Respondent put himself and the Department at risk, an action which flies in the face of prudence and raises serious questions about Respondent's judgment.

Moreover, Respondent graduated from the Police Academy on June 28, 2012, and since the evidence shows that he may have begun ingesting Morphine and Oxycodone as early as October 16, 2014, the record indicates that Respondent may have begun consuming these

controlled substances just over two years after he began performing active duty as a police officer.

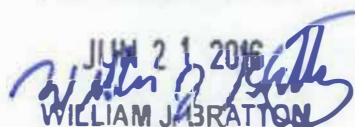
Accordingly, it is recommended that Respondent be DISMISSED from the New York City Police Department.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner - Trials

APPROVED

JUN 21 2016

WILLIAM J. BRATTON
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER SEAN RUANE
TAX REGISTRY NO. 952193
DISCIPLINARY CASE NOS. 2015-13367

Respondent received an overall rating of 4.0 on his 2014 annual performance evaluation, and 4.0 on his 2012-2013 22-month probationary evaluation. He has no medals. [REDACTED]
[REDACTED] He has no prior formal disciplinary record. He was suspended from duty on April 1, 2015, after he was served with the instant charges.

For your consideration.

Robert W. Vinal
Assistant Deputy Commissioner – Trials